

AlaFile E-Notice

16-CV-2009-900138.00

Judge: C ROBERT MONTGOMERY

To: UNITES STATES BANKRUPTCY COURT (PRO SE)
SOUTHERN DISTRICT OF N Y
NEW YORK, NY 10000

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF CLARKE COUNTY, ALABAMA

LEANNE E. CLARK ET AL v. GENERAL MOTORS CORPORATION ET AL
16-CV-2009-900138.00

The following matter was FILED on 4/27/2011 1:42:56 PM

D002 TAKATA CORPORATION

D004 TK HOLDINGS, INC.

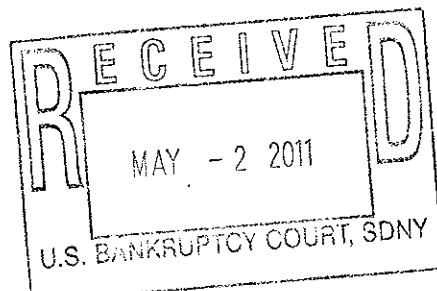
MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56

[Filer: BROWN DAVID LEE JR.]

Notice Date: 4/27/2011 1:42:56 PM

JAY DUKE
CIRCUIT COURT CLERK
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STATE OF ALABAMA

Unified Judicial System

16-CLARKE

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 District Court Circuit Court

Case

CV20

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CV-2009-900128-00

CIRCUIT COURT OF

CLARKE COUNTY, ALABAMA

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CV-2009-900128-00

CIRCUIT COURT OF

CLARKE COUNTY, ALABAMA

JAY DUKE, CLERK

CIVIL MOTION COVER SHEET

LEANNE E. CLARK ET AL V. GENERAL MOTORS CORPORATION ET AL

Name of Filing Party: D004 - TK HOLDINGS, INC.

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

DAVID LEE BROWN JR.

2801 HWY 280 S, SUITE 200
BIRMINGHAM, AL 35223

Attorney Bar No.: BRO205

 Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) <input type="checkbox"/> Joinder in Other Party's Dispositive Motion (i.e. <input type="checkbox"/> Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00) Renewed Dispositive Motion(Summary Judgment, <input type="checkbox"/> Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input checked="" type="checkbox"/> Summary Judgment pursuant to Rule 56(\$50.00) <input type="checkbox"/> Motion to Intervene (\$297.00) <input type="checkbox"/> Other _____ pursuant to Rule (\$50.00) *Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees. <input type="checkbox"/> Local Court Costs \$ _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input type="checkbox"/> Other _____ pursuant to Rule (Subject to Filing Fee)

Check here if you have filed or are filing
 contemporaneously with this motion an Affidavit of
 Substantial Hardship or if you are filing on behalf of an
 agency or department of the State, county, or municipal
 government. (Pursuant to §6-5-1 Code of Alabama
 (1975), governmental entities are exempt from
 prepayment of filing fees)

Date:

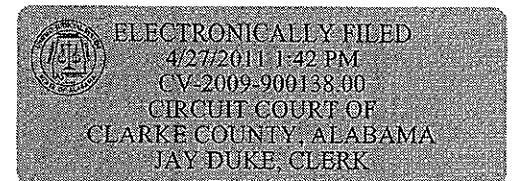
4/27/2011 1:41:46 PM

Signature of Attorney or Party:

/s/ DAVID LEE BROWN JR.

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT FOR CLARKE COUNTY, ALABAMA

LEANNE E. CLARK AND *
CHRISTOPHER D. CLARK; et al., *
*
Plaintiffs, *
*
vs. * CIVIL ACTION NO. CV-2009-900138
*
GENERAL MOTORS CORPORATION; *
et al., *
*
Defendants. *

MOTION FOR PARTIAL SUMMARY JUDGMENT

COME NOW Defendants, TAKATA CORPORATION and TK HOLDINGS INC. (“Takata Defendants”) and respectfully file this Motion for Partial Summary Judgment pertaining to Plaintiffs’ Loss of Parental Consortium Claims. In support of this Motion, the Takata Defendants show unto the Court as follows:

1. This is a product liability action arising from a single-vehicle rollover crash involving a 1999 Pontiac Grand Am passenger car that occurred on February 6, 2008. At the time of the accident Leanne Clark was driving the subject vehicle. According to the Complaint, three of the Plaintiffs are minor children of Leanne Clark. Count Eight (8) of the Complaint alleges “Loss of Parental Consortium” on behalf of the three minor children, Plaintiffs.

2. In Patterson v. Hays, 623 So.2d 1142 (Ala. 1993), the Alabama Supreme Court set forth a concise statement explaining that a loss of parental consortium claim **is not recognized** in Alabama: “Although we note the plaintiffs’ argument that ‘Alabama’s denying a child a right to prosecute a loss of consortium claim for injuries to his parent does not reflect a universal view’, **that is the law in Alabama. Any further discussion is unnecessary.**” 623 So.2d at 1146 (emphasis added).

3. Rule 56 of the Alabama Rules of Civil Procedure sets forth a two-tiered standard for granting a Motion for Summary Judgment. A.R.C.P. 56. The trial court must determine: (1) that there is no genuine issue of a material fact, and (2) that the moving party is entitled to judgment as a matter of law. Ala R. Civ. P. 56(c)(3). Summary Judgment in favor of the defendant is proper when a plaintiff brings a claim that is not supported by Alabama law. See, e.g., Jones v. B.P. Oil Co., Inc., 632 So.2d 435, 438-39 (Ala. 1993)(upholding trial court's grant of summary judgment in which plaintiff brought claim which was not recognized as a cause of action under Alabama law).

4. Because Plaintiffs' claim of loss of parental consortium is not supported under Alabama law, Summary Judgment is due to be granted in favor of the Takata Defendants as to these claims. See Hays, 623 So.2d 1142 ; Jones, 632 So.2d 435.

WHEREFORE, PREMISES CONSIDERED, the Takata Defendants respectfully request this Honorable Court to grant Partial Summary Judgment as to Plaintiffs' loss of parental consortium claims in their favor.

Respectfully submitted this the 27th day of April, 2011.

BY: /s/ David L. Brown, Jr.
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Attorneys for Defendants Takata Corporation
and TK Holdings Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing and/or by depositing a copy of same in the United States Mail, postage prepaid and properly addressed on the following:

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